App. F. IX-4

193 S (Luggis)

File No.

Serial Nos.

Previous References

Luggis 100-34(1-6)

Later References

Diary No. 941 MTS 38

T. B9-39-38

39

GENERAL AND REVENUE SECRETARIAT

Serial Nos. ~~Luggis~~ Mine

Part B for August 1936

SUBJECT

permanent disqualification of Sheikh Yusoof from obtaining a driving license

Secy Nos 1267 of 18-8-36

To be filed

Noted in above

M Symon
20/8/36

Serial No.

From The Dist magte Madura Dist

No g 2.1400/35-36 dated 29.10.35.

Forwards a copy of the judgment by special first class magistrate Chick magg convicting Sheik Yusoof Sab, motor lorry driver and sentencing him for two months rigorous imprisonment and a fine of Rs 100 for causing death of a boy by his rash and negligent driving and recommending to disqualify Sheik Yusoof Sab permanently from driving a motor vehicle.

Sheik Yusoof sab dashed his lorry against the boy who died instantaneously, and passed off without stopping inspite of the cry of the people to stop.

2) The recommendation of the Dist magte to disqualify him permanently is for orders. Kind attention is invited to para 18(1) of the M.V. Regns where in it is required that the affected person should be given an opportunity of being heard. It is for orders whether the Dist magte may be requested to hear Sheik Yusoof sab in the first instance.

Jcmg 1/11/35

3) This is, I think, a fit case

Jcmg 1/11/35

NOTE.—Contn. Sheet.

WD 03594—GPB—80,000—18-7-35

File No. of 193 | General and Revenue Secretariat

for action being taken under sec 18(1)(ii) of the M.V. Regn to declare Sheik Eso of Sab disqualifies for obtaining a license permanently. Before however doing this, the person affected has to be given "an opportunity of being heard" and I think the hearing has to be before the authority taking action, in this case, the Govt. A date may be fixed when a show cause notice will be issued for service through the Dr. Magte.

(Gen Secy) DNE 2/11

DNE 2/11

DNE 2/11

(Asst Member).

4) Yes

√P2 4/11

DNE 4/11

DNE 5/11

5) The observations of the drivers are not known to enable service of notice. Further he holds a driving license issued by the P.D

2-NOV 1935 731

(illegible)

OFFICE OF THE FIRST MEMBER OF COUNCIL 4 NOV. 1935 No. 2625

Serial No.

the S.D.P. Mangalore &c-
as aforesaid the information
may be called for

Done
7/4

7) Issue
me
7/4

2 No P 3134 G 9.4.35
To
The Superintendent of
Police Mysore the address
of driver Shaik Ibrahim may
be ascertained & Reported to Govt

3 from
The 1st Magistrate, Kadur
no J2-1400-35 dt 13.3.36.

Reports that the Driver is not now a resident of the Mysore State and furnishes his mangalore address.

8) Reference paras 3 & 4 supra Now that the person is away from Mysore, it is a point for Consideration if the Contemplated action is necessary in this Case
Subs for orders

17/3/36

9) The license was are granted in Bombay

NOTE—Contn Sheet.

WD 03594—GPB—30,000—13-7-35

5732

File No. of 193 | General and Revenue Secretariat

and received by the D.S.P. South Kanara. The driver is also not a resident of Mysore and is now reported to be in Mangalore. This does not however prevent further action being taken under Sec 18 (11) of the Motor Vehicle Regulation, because that section empowers Govt to declare any person disqualified for obtaining a licence either permanently or for such period as it thinks fit and such a declaration even though the person is a non-resident will prevent him from applying for a licence in the State. I therefore think that further action may be taken.

(Yes Sey) mne 17/3/36

10) Yes
Inc
1873

Draft to be made for issue a show

11) Issue a show cause notice through D mgte
mne
1873

12) DC notice subs for appl.

9/3

13) Issue
mne
19/3

Issued no P 6442 of 25/29 3.36

25-3-36

GENERAL DEPT. 17 MAR 1936

TYPING SECTION 20 MAR 1936

Cancellation of driving license
Sheik Yousuf

General and Revenue Secretariat | File No. 45 of 1935. | [App. F. III—2

Serial No.	
12	Pet^n. from Sheik Yousuf praying that further proceedings against him may be stopped.

14) In reply to the show cause notice, he says that if he is deprived of the opportunity of obtaining a license under the M. V. Rep^n. permanently it would amount to double punishment and prays that he may not be deprived of the means of earning his livelihood.

15) Ref para 11. Subs for orders

B. M^cK
25/4/36

16) The judgment in the Criminal Case clearly shows that this driver was guilty of careless & negligent driving of the lorry and that he did not even stop the vehicle after the accident resulting in the death of a lad of abt 7 years. He set up a false defence that it was not his lorry that caused the accident. His conduct throughout this case shows that he is not at all a desirable person to hold a driving license under the M. V. Rep^n. - As recommended by the Dt Magistrate, Sheik Yousuf Sab may be permanently disqualified under Sec 18(1).

25 APR. 1936
Sec

OFFICE OF THE PUBLIC SERVICE COMMISSION
27 APR. 1936
1443

NOTE.—Continue on Sheet No.

WD 03594—GPB—80,000—18-7-35

Thro' Special Officer
Govt Secy
1) DW 25/4 27/4

First Member
2) DW 28/4 29/4 2/4/36
3) DW 27/4

Cancellation of driving license: Shiek Ensoof Sahib

Levy File No. 43 of 1935 — General and Revenue Secretariat

20) Dft notfn and memo to the Dtn Kadur subd for appt. The description of the driver is now available and he holds a Br Indian license. Those two items have not been mentioned in the dft notfn. Dft letter to the Residency also subd for appl.

21) If appd an enot bill issue to the driver. 28

22) Yes

B/ 4/5/36 — 5757 88

23) Dft letter to the Dtn Kadur calling for the description of the driver subd for appl as instructed. Pending receipt of the reply the issue of the notfn is withheld.

B/ 8/5/36

24) Issue

TYPING SECTION 5. MAY 1936 GENL & REV. SECTT.

TYPING SECTION 8. MAY 1936 GENL & REV. SECTT.

To, 16

The Dtn. Kadur

no P 7455 dt 9.5.36

Calls for the description of the driver

Sd/ 11.5.36

From 23

The Dtn Kadur

no J 2 1034/35 dt 5/8/36

furnishes the description of the driver.

The enclosure to the Dtn's letter has not been received.

Cancellation of the driving licence of
Sheik Ensoof Vallabh

General & Revenue Secretariat. | Secy. File No. 43 of 193 | [App. F. III–2

Serial No.	
	But that does not seem to matter, as the person concerned has himself applied to the show cause notice issued to him.
	The draft in the file is added to and submitted for approval. The letter to the Residency may also issue.
	B. 10.8.36
	Issue. The letter to Resy may also issue.
	10/8
26	To
	The Compiler, Mys.
	no P 1267 dt 18.8.36
	Notifying the permanent disqualification.
	Copy to the D.C. Kadur
	no P 1268 dt 18.8.36
	Copy to the Supt. P & the remaining two
	no P 1269-70 dt 18.8.36
27	To,
	The Secy to the Hon'ble Resident,
	no PR 234 dt
	forwarding a copy of the notfn.
	B 19.8.36

NOTE—Contn. Sheet.

In reply please refer to—
No. J2-1400-35.

OFFICE OF THE DEPUTY COMMISSIONER
District Magistrate,
KADUR DISTRICT

Chikmagalur, dated 29th Octr. 1935

Enc. 1 copy of judgment.

FROM M. Abdul Hukh, Esquire, B.A.,
~~C.S. KUPPUSWAMI IYENGAR, ESQUIRE,~~
District Magistrate & *Deputy Commissioner,*
Kadur District.

To

K. Venkatesa Iyengar, Esquire, M.A.,
~~*Chief*~~ *Secretary to the Government of*
His Highness the Maharaja of Mysore,
General Department, *BANGALORE.*

30 OCT 1935

SIR,

I have the honour to forward herewith a copy of Judgment in C.C.No. 172/34-35 on the file of the Special First Class Magistrate, Chikmagal (Government Vs, Sheik Dusoof Sab, Accused) convicting the accused of an offence under Sec. 304A I.P.C., and sentencing him to two months' rigorous imprisonment and to a fine of Rs 100/- in default to undergo rigorous imprisonment for another two months, for causing the death of boy of about 7 years by his rash and negligent driving of Motor Lorry No. Mys. 5648. That the accused committed a rash and negligent act is clearly borne out by the evidence discussed in the enclosed judgment of the Special First Class Magistrate. I therefore, recommend that under Section 16 (1) of the Mysore Motor Vehicles Regulation, sanction of Government may kindly be obtained to permanently disqualify the said accused Sheik Dusoof Sab from driving a motor vehicle.

2. The driving license of Sheik Dusoof Sab is herein enclosed.

I have the honour to be,

Sir,

Your most obedient servant,

R. Ramiah
Treasury Assistant Commissioner,
for District Magistrate,
Kadur District,
(Absent from Head Quarters).

In the Court of the Special First Class Magistrate, Chikmagalur
Dated, Chikmagalur the 24th September, 193[illegible].

Present G. Krishna Murthi, Esquire, B.A., LLB.,
Special First Class Magistrate, Chikmagalur.

C.C.No. 172/34-3[illegible].

Offence punishable under Section 304 A. I.P.C. and Section 16 of M.V.R. read with condition 1(a) of G. Permit.

Complainant.	Vs.	Accused.
Government.		Sheik Eusoof Bin Sheik - Mohadeen, Mangalore.

J u d g m e n t .

1. The accused is charged under Section 304 A, I.P.C. with having caused the death of a boy Rame Gowda by doing a rash and negligent act. He pleads not guilty.

2. The prosecution case is as follows :- The said Rame - gowda was a lad of 7 years and the son of Pw.2 Puttegowda of Kenjige village, but had been left with his aunt Pw.3 in Chattamakki village for studies. That is a road side village on Mudigere Mangalore [illegible] road, between Mudigere and Banakal pet - about 6½ miles from one and 1 or 1½ miles from the other. The house of Pw.3 is solitary and is about 200 feet from the road between wh ich and her house is the Bankenahalli Bandimotu or cartstand on the rig ht side of the road as we come from Banakal side. On the evening of 7-3-35 Pw.2 Puttegowda, who had come for jatra to Bankal came over to Chattamakki and was standing on the mound at the c artstand by the side of the road, talking with cartmen. The boy Ramegowda came up there and was standing in the road side drain near his father, when a lorry came up from the side of Banakal dash ed against him and passed off without stopping inspite of the call of the people there to stop. The boy died instantaneously with his head fractured and blood flowing from his head, mouth and nose. Pw.2 went to Banakal pet, got a complaint, Ex.P.1 written and gave it to the police daffedar Pw.13 and came back. Pw.13 sent Ex.P.1 to the Sub Inspector Pw.15 at Mudigere and himself came to the spot and saw the dead body of Ramegowda lying in

a pool of blood by the road margin with the greaterportion of his body inside the drain. The early hours of the morning brought th e Sub Inspector Pw.15 to the spot. He held an inquest over the corpse of the boy next morning. By that time, the Inspector of police Pw.1 also came there and took up further investigation. In the meantime Pw.15 upon information had at the spot had deputed Pw.17 Krishna Nair to trace out this accused and Dr. Narayana's lorry which he had driven that day and Pw.17 had traced it and taken it and the accused to Mudigere where Pw.1 after he went seized it and arrested the accused. Pw.1 requisitioned the doctor Pw.11 to come to the spot and hold the post-mortem and Pw.11 held the post mortem between 12 and 3-30 P.M. on 8/3 and his report is Ex.P

3 That the boy Ramegowda died or an accident, and that accident was the dashing of a lorry against him at Chatte makki bandi motu and th at lorry was one passing from Sanakal side towards Mudigere admits of no doubt. The boywas a healthy lad playing about till evening in the house of his aun t Pw.3 and just came to the road side seeing his father And th ere just by the road side - in fact inside the drain - a lorry coming from Sanakal side dashes against him with the result that what was a living child is thrown upas a dead heap in the presence of hisown father. The injuries which Pw.11 had found show that the skull was fractured and the death instantaneous and Pw.11 opines that the death is the result of the shock and haemorrnage result of compound and multiple fracture of the skull. All the people present saw that the boy was knocked down by a lorry passing up towards Mudigere, and about that they could not have mistaken.

4. The next question is which was the lorry that dashed against him. The prosecution case is that it was lorry Mys. 5648 of Pw.10 Narayana and which this accused drove that day that did it. That it is a fact that the lorry Mys. 5643 was driven by the accused in that road from Mangalore to

Huli Hanllu

Huli Hanilu estate cannot be doubted. This lorry Mys. 3040 ort.1 belongs to Pw.10 - aprivate medical practitioner at Mudigere and his permanent driver is Thyamma Pw.8. The evidence of Pw.8 makes it clear that it was only for that day temporarily that he engaged to drive the lorry as he fell ~~xxx~~ ill that day. He says that on 6-3-35, he drove this lorry to Mudigere and fell ill th ere and as a load of manure had to be taken th day from Mangalore he engaged this accused who h as a driving license Ex.P.7 to drive the lorry that day and bring it back to Mangalore and accordingly the accused left Mangalore with a load of manure bags ~~xx~~ at 2 or 2-30 P.M. on 7-3-35. We have the evidence of Pw.20 the toll gate keeper at the Kotigehar toll gate that thislorry reached the tollgate at 5-55 P.M. (vide Ex.P.8 a and P.3 and it reached Kotigehar as noted by Pw.12 the motor checking daffedar at the place at 6-30 P.M. Vide Ex.P.6a 1 and that entry is signed by this accused. Then the lorry came on to Banakal which is about 1½ miles from Kotigehar and is said to have delivered some goods to one Sha (Dw.4 Iddina Beri) and then went on ~~xx~~ and passed Chatt akk On the way between Banakal and Chattamakki they took in three passengers Pws. 5,6 and 7 who were going to Mudigere to atten a music performance, but instead of dropping them at the Kyma where the road branches one going to Mudigere and the other towards Gonibid the accused is said to have taken it on for a few ~~xxx~~ furlongs in the road to Gonibid and there dropped them and to have also given some warning to Pws. 5,6 and 7. As to this last fact there is some difference in evidence which will be referred to later on. The persons who travelled in the lorry were the accused who was driving, Pw.9 th e conductor, one Hopla boy (who is suggested by the defence to be Dw.3) and another Christian in-side the lorry. Pw.9 h been treated by the prosecution as hostile and I think with just reason. He was in the position of an accomplice to the offence for if Pw.5,6 and 7 are to be believed, having observed the accident he and accused did not stop the lorry but went on. That he is seeking to help the defence is more than clear, for he wanss to go even further than th e defence

defen ce in deriving facts wh ich at all lend to help the prosecution. Pw.8 is positive that the lorry left Mangalore at 2 or 2-30 P.M., but thiswitness wants to make out that it was at 10 or 11 A.M. that they left. He denies that lorry was stopped at all after they left Banakal and between it and Chattamakki or that theypicked up any passengers. He states that 3 or 4 Mussalmans asked them to stop but they refused an d went on. That this is false is shown by the evidence of Dw.3 who admits that they lorry was stopped after passing Banakal and the 3 or 4 persons were taken in. The object of Pw.9 is obvious, he wants to discredit their evidence that they travelled in this bus.

5. The stand taken for the accused was that though the accused drov e this lorry that day in that road in the evening yet it was not his lorry that dashed against the boy. but it must have been some other lorry which passed that way at the same time either before accused slorry or after him, and that somehow they have foisted it on this lorry and the accused.

6. Fortunately the toll gate and the police checking of the lorry furnish us materials as to all the lorries passing in that road. The toll gate at Kotigehar toll gate shows any lorries coming from Mangalore side. Near Kotigehar itself wh ich is 3 miles from toll gate, the road from Kalasa ~~comes~~ Comes and join s and the police checking register at that place records the lorries from both the roads. That day as Pw.12 say s no lorries came from Kalasa road. After Kotigehar no other road comes and joins the road.

7. The time of accident too is derinetely known. All the witnesses Pws. 2,3,4,14,19 say that it was even when there was some day lightleft and itwas about to become dark butlamps had not been lit and in times of hours they put it between 6-30 and 7 P.M. This latter on the face of it is only approximate as it that out of the way Malnad village there was no watch or clock. The written complaint Ex.P.1 mentions the incident to have

taken

taken place at 6-30 P.M. (and that too could only be approximate) and it was presented to Pw.13 at 7-30 which Pw.13 says he put by estimate of time only. It must have taken some time for Pw.2 to go walking to Banakal about a mile or a mile and half away and then get Ex.P.1 written and presenting it. Taking all these things into consideration it may be stated that the incident must have taken place sometime between 6-30 and 7 P.M.

8. So confining our attention to lorries going up i.e. towards Mudigere and between 5-30 and 8 P.M. we find that it is only 4 lorries that have so passed that day. They are lorry 5423 which left toll gate at 4-35 and that may be left out of account as it must have passed the scene of accident which is about 5½ or 6 miles from toll gate in about ½ an hour and so long before the incident even allowing for possible stoppages on the way. In fact Pw.14 (the shop) says that one lorry passed towards Mudigere about ½ an hour before incident. The next lorry that came up was this accused's lorry Mys. 5468. According to the times noted in Ex.P.6 a and P.8 a and even allowing for stoppages at Kotigehar and Banakal, this lorry must have passed the time of accident between 6-30 and 7 P.M. It is in evidence that between lorry 5423 and Mys. ~~5468~~ 5648 no other lorry passed. So the contention of the accused that the accident must have been caused by some lorry passing before him falls to the ground. Indeed even Pw.9 so partial to the defence and Dw.3 who were in accused's lorry say that when they passed this spot (opposite to shop of Pw.14 which they say they particularly noticed owing to the cart standing there and the lorry being steered consequently a little to the right) there was no galate, no crowd of persons and no dead body by the side of the road as there should have been if the accident had taken place before the accused's lorry passed. So, the accident must have been occasioned by accused's lorry when he passed or by some lorry subsequently going.

9. The lorries subsequently passing could also be eliminated. They are No. 5470 driven by one Krishna, S.K.783 and Mys.2154 the last as it left toll gate itself at 7-5 P.M. could have taken no part in an accident which took place about that time some 6 miles further up. It is in evidence that one lorry turned up to spot and

soon after accident and seeing the accident it stopped there onl y till the police daffedar Pw.13 turned up to avoid suspicion being caste against it and then left. Pw.13 says that that he saw that lorry in Banakal near some Konkon's shop delivering some goods, when on receiving information ~~xx~~ from Pw.2 he came out and that soon after that lorry left Banakal and that when later he came to spot he saw it detained there and that lorry is 6470 As to lorry S.K. 783, Pw.13 says he came to spot in that lorry from Banakal. Pw.13 while he found lorries 6470 and 783 in Banakal at and after he got Ex. P.1 also learnt that Dr. Narayana's lorry had gone from Banakal after delivering jaggory to a shop

10 This evidence about lorry 6470 is sought to be rebutted by the evidence of Dw.2 Subbaraya Prabhu a merchant of Banakal This merchant is made to say that on the day in question he did not receive any goods palm jaggory from any lorry or from ~~Krishnan~~ Krish naiah's lorry. But I fail to see how this evidence is helpful at all. Pw.13 has not stated that it was to the shop of Dw.2 that lorry 6470 delivered the palm jaggory. He merely states that it was in front of a Konkan's shop that he saw the lorry stopping and was unable to give the name of that merchant. ~~xx~~ It is not known whether Dw.2 is a Konkani, or if there are not any other Konkanies shops in Banakal.

11. The accused wants to make out that his lorry left Banakal at 7-30, or 8 P.M. and must have gone to spot ever later. It is to prove this that the Dws. 1,3 and 4 are examined and Pw.9 with his leaning for the defence is made to say. But this cannot be true for if it were so, it must have been after the accident that they must have passed spot. But they admit that there was no dead body there and no commotion when they passed. I am not prepared to place any reliance on this evidence. It is curious how Dw.1 has been unearthed to give evidence. According to him he and the accused are strangers and did not see each other on the day of occurrence the accused did not know that Dw.1 was camping at that Banki-

Bandimotu nor did Dw.1 know that the accused drove the lorry. ~~xxxxxxxxxxxxxxxxxx~~ Some one month after the incident one day he met this accused in a hotel in Chikmagalur and when talking came to know that this accused had been implicated and then he revealed that he was present at spot that day. That he does not know anything about the matter is male clear from the story he gives, viz. that a boy fell from the lorry. Dw.4 is a merchant of Banakal to whose shop this accused brought and delivered a packet of jaggory. He confesses that he has no watch or timepi and it is only by estimate that he says that accused'slorry left Banakal at 7 P.M. Even a matter of a few minutes difference is sufficient to render this evidence of no avail to exonerate the accused, as the scene of accident is abouta mile from there.

12. Coming now to the other evidence implicating the accused Pw.4 who is a resident of Chattamakki was returning from attending the jatre at Banakal and on the way about 2 furlongs from Chattamakki he saw this lorry driven by this accused came from behind, and stop, pick up Pws. 5,6 and 7 and go off. When a few minutes later he came to the spot he saw this boy lying dead in the road and they saw that the lorry that passed had dashed against the boy. He says no other lorry passed.

13. Pw.14 whose shop is just opposite the place of occurrence and who saw the lorry dash against the boy and pass off at once got up and gave chase calling upon the lorry to stop. He says he noticed and noted the number of the lorry then from the back number plate and it was Mys 8648. Pw.19 Ranga Rajia's house is higher up in the road by its side - about 2 or 2½ furlongs along the road and about ½ that distance by a short cut as the road takes a sweep in a bend before going near his house. This witness who was seated in the Chowdi of h is house, heard this hullabaloo, and seeing persons chasing it, came to the road and showed his hands for the lorry to stop but it was disregarded and the lorry was driven away . He too then noticed and noted

e number of the lorry from the back number plate and says it was Mys. 8648. When the witness went to spot he too found the

dead body of the boy lying by the road side and was told that the lorry that passed had passed over him. It is from these two witnesses that Pw.13 and Daffedar as soon as he went to the spot, learnt that it was the green-coloured lorry of Dr. Narayana that had dashed and killed the boy and this information the latter conveyed to the Sub Inspector Pw.15 as soon as he came and Pw.15 sent for Pws. 12 and 14 and they gave him the number of lorry th at had caused the accident as My s 8648. It was this information which made Pw.15 to hunt after the accused and this car and depute Pw.17.

14. One thing is urged against their evidence that if they had noticed the number they would have informed it to Pw.2 and he would have included it in Ex.P.1. Ex.P.1 is silent as to the number or identity of lorry or driver, bu mentions merely that some lorry dashed. This argument is not without some forces but it must be remembered that Pw.2 is illiterate and must have been in a distracted state of mind. He has got the report written by some one in Manakal. For such a man to remember this rather big number was too much even if he was told of it before he left to complain. Pw.14 says that the number was stated to him he did not understand it, and in another place he says he did not know to state the number and get it written in his petition. Pw.19 however states that he did not give the number to Pw.2 as by the time he came to spot Pw.2 had gone to give the complaint to the police.

15. The other piece of evidence pointing to this lorry is the evidence of Pws. 5,6 and 7 How they took this lorry lorry on the way between Manakal and Chattamakki has already been referred to. They state that when they came opposite the shop of Pw.14, the lorr was going on the right side of the road - a fact admitted by Pw.9 and Pw.3 - and that at that spot they heard a sound of A B D but the lorry was not stopped but went on. They also speak to the incident about the accused being unwilling to stop the lorry at Kymara

Kymara * where they had to get down to go to Mudigere but ran on for a few furlongs in Gonibid road and then dropped them there and gave them the warning that the boy appeared to be injured a little, and not to disclose any of this to any one. Later after finishing the music party they left Mudig ere at 12 or 1 A.M. and while returning saw the corpse of the boy and when questioned by a constable there also told him about their journey.

16. As against their evidence it is alleged that it is discrepant. The discrepancy relates 1st to the mode of their paying their fare to accused and 2nd about the warning given. About paying the fare there is no doubt some discrepancy, but not much could be made out of it, as the evidence of even Dw.3 establishes the fact that the accused did pick up these 3 persons and took them in the lorry. As regards the alleged caution given by accused at the place where th ey got down, Dw.3 flatly contradicts them. But Dw.3 is apparently a creature of the accused and would not hesitate to stretch a point in his favour. As even Pw.9 says Dw.3 was a friend of the accused and the accused ~~obliged~~ obliged him with afree ride in the lorry from Mangalore to Chikmagalur. He is a man of straw and the 2 annas or 3 annas which he earns a day by way of cooly is all that he has to look to for his maintenance. It is easy to make such a witness state any thing.

17. As against Pws. 5,6,7 it is to be seen no allegation is even suggested why they should speak against the accused. No doub t there is some variation as to what they say how the caution was given. One saying it was the accused who conveyed the caution and anoth er that it was the cleaner, one saying th at the caution was given in Kanarese and the other that it was stated in Hindustani. But to my mind the discrepancy is only apparent. It is possible that both the accused and Pw.9 cleaner made the request and one s tated in Hindustani and the other in Kanarese. Nor is the reason of this caution difficult to see. Apparently they knew that the boy had been injured though they may not have suspected the full extent of the injury Fearing pursuit and to give the wrong scent, the accused did

did not care to stop in the more frequented route to Mangalore at Kymara and went a few furlongs in Gombid road and there thought that of husking up these witnesses by giving the caution.

18. One point intheir evidence raises some sort of doubt, viz. that they should not have heard any sort of uproar behind them when they passed the spot as Pws say it was raised. But one of them Pw.7 was seated in the front seat and could not see what was passing behind and the oth er two had stretched themselves inside the box of the lorry which h as wooddcn walls all round. This seclusion and the noise of the travelling lorry perhaps drowned this uproar behind. Any now they say they did not hear it.

19. One point urged for the accused was, that no blood stains was discovered on it when it was found by Pw.10 and later by Pw.17. Pw.10 and Pw.17 no doubt say so. But I cannot help, suspecting this witness of a certain soft corner towards the accused. After all it was Pw.10's lorry that was being driven and he would not like this bad name, that it was run over a boy to be attached to it. Hmm. But assuming that there was no blood stains when Pw 10 found the lorry, to my mind it does not serve to exonerate that lorry. There was an interval of over 15 hours before it was found and that included one entire night and in that interval it may have been washed anywhere if it had any blood stains. Pw.16 no doubt says that the lorry came to Bullhandlu estate at 9 P.M. and spent the rest of the nigh t there. Pw.16 was not intent upon noticing if it had any blood stain s when it came, nor did he spend the entire night with the lorry or accused and Pw.9. Pw.9 no doubt says they did not wash. But about the unreliability of that witness I have often referred. Then it has to be noticed that the lorry has travelled 23 miles. Above all I am doubtful whether the kind of accident would leave any blood stains on the lorry at all. It is not as if the boy lay under the lorry and any portion of his body was crushed in which case we can expect blood marks

12

on the lorry . But some portion of the lorry knocks against his head and the boy is thrown off to my mind it appears as if any blood would spurt out and stain the lorry. There is no force in these objections.

20. Every thing, the direct evidence, the probabilities, the conduct of th e accused, and the rebutting evidence showing that the other lorries whichpassed could not have had a hand in the affair, all points to this lorry Mys. 5648 as the one which caused the accident and knocked the boy and my finding is that it is this accused who was driving that lorry who is responsible for it. It was he who caused the death of the boy.

21. This is not sufficient to hold the accused guilty. It has still to be seen wheth er the accused was guilty of rashness or negligence. That the boy was at the extreme right edge of the road if not in the side drain that side is amply made out from the evidence. That the lorry also came on the right side to where the boy was and knocked him is also clear from the evidence of Pws. 2 and 1 and the position where the boy lay dead. Pws. 5,6,7 also state that thelorry at the place was going on the extreme right of the road. Advantage was sought to be taken for the accused by the statement of Pw.6 th at the boy was standing 1 cubit from the side drain and the lorry was going ½ or 1 yard from side drain. On this it was stated, that Being saying that the width of the road was 12½ feet and that of the lorry 5 feet 8 " that the lorry was practically going in the middle of the road. But thisstatement of Pw.6 cannot be taken as literally true for even he says that the lorry was going on the right side of road. It must also be observed that the mere fact that a vehicle keeps to the right side of road or going in the middle is no excuse for being rash or negligent. Even in those portions drivers cannot throw care and caution in driving, to the winds and it would be no answer in a driver for being rash or negligent by merely stating he was keeping to the right side of the road. But in this case even that plea is not open to the accused.

22. Why the accused was taking the lorry to the right side has to be seen. It is in evidence that till Pws. 5,6 and 7 were taken into the lorry there were in the front seat only this driver(accused), Dw.3 and Pw.9 on the left, and after Pws. 5 6 and 7 were picked up one of them Pw.6 took the front seat, while the oth er two sat in the body of lorry. This brought 4 persons in the front seat, which as Pw.8 says is made to hold on ly 3 to allow driving safer. The measurements of that seat is 5 feet 1¼ " out of this 9½ " space on the right side is taken up by the tool box permanently fixed there. The rest of the space viz. 4' - 4 " two cushions each of 2 feet 3 " long cover, and one of them to the right covers the space up to the leg brake and as Pw.8 says none but the driver should sit in it. The obvious reason is th at it is only them that he could freely handle and operate the steering and brake etc. It was argued that even in ordinary buses, the license requires a provision only of 14 inch es of seating space for each passenger and the front seat in this case was only 4 short for seats even according to that allowance. But this not only shows that the space was insufficient to seat 4 persons but fails to take into account that for the driver the same allowance of 14 space is nowh ere contemplated. The evidence of Pw.8 who is a driver of experience is conclusive on the point. He says that the front seat in the case of this lorry could only take in with safety to steering and driving, two more besides the driver and that the two must sit on one cushion and leave the other cushion free to the driverand that if more th an two sit in it besides the driver it will inconvenience the driver to steer the lorry in turning etc., and it becomes difficult to steer. Th is makes the erratic driving of the accused after seating Pw.6 in the front seat. It did inconvenience him in steering and in his difficulty and awkwardness has dashed against the boy standing on the extreme right of road. It has been suggested that on the left side of road opposite to Pw.14's shop a cart was standing and this necessitated the accused to take the lorry to the right. The existance of that cart there is denied b y

denied by all Pws excepting as usual Pw.9. Pw.9 and Dw.3 to it. Assuming it was standing there the business of the accused was to have the obstruction removed if th ere was no sufficient passage for him and not recklessly drive/ on the right side knocking against persons standing there. Even if he took the care for that reason that does not exonerate him of recklessness. Another theory put forward, and that through Pw.10 is that just before coming to the spot there is a short curve towards Banakal side and to negotiate it the lorry has to be taken a little to th right. I am not able to agree with him both on fact and reason. According to him that curve exists 10 yards from Pw.14's shop and it seems only for 7 or 8 yards. I have had the adv tag of inspecting the spot personally. The facts are as stated by Pw.14 that the road is straight for at least ½ a furlong towards Banakal and after that isa bend but not a sharp one. So even after negotiating that bend anydriver of ordinary ability could in driving ½ a furlong bring the lorry under control. Further as that bend is towards right as we come from Banakal, any lorry taking that turn from that side will take a sweep towards left not right side. But Pw.10 confesses he has no driving experience, so we might excuse him these irresponsible statements and ignore them.

23. The facts and circumstances above stated show that the accused was careless and negligent when he was driving th ere and it is this rash and negligent act that caused the death of the boy.

24. I therefore hold the accused Sheik Busoof guilty of the offence under section 304 A, I.P.C. and under Section 2[illegible] Cr.P.C convict him of the same. I sentence the accused to undergo rigorous imprisonment for two months and to pay a fine of Rs.100 in default to undergo rigorous imprisonment for two months.

25. Of the articles, the lorry article 1 is in the possessi of owner Pw.10 and he may retain it. Articles 2 to 4 will be returned to Pw.2 Puttegowda.

I open Court,
Sd/- G. Krishna Murthi,
Special First Class Magis-

District Magistrate

In the Court of the Special First Class Magistrate, Chikmagalur.
Dated Chikmagalur the 24th September, 1935.

C.C.No. 172/34-35.

The following witnesses were examined for the prosecution.

Pw.1. Mr.C.K. Shama Rao.
2. Puttegowda.
3. Manjamma.
4. Thimmegowda.
5. Mahommed Ghouse.
6. Mahommed Ismail.
7. Abdul Khadir.
8. Thyampu.
9. Koragappa.
10. B. Narayana.
11. Mr. M.C. Nanjappa.
12. Shama Rao.
13. Rama Rao.
14. Sheik Ahamad.
15. Mr.K. Venkateshaiya.
16. Jhon Rodrix.
17. Krishna Nair.
18. Lakkappagowda.
19. Rangarajah.
20. Manjegowda.

The following exhibits were produced for the prosecution.

Ex.P.1. Petition of Puttegowda dated 7-3-35 to the Police.

2. Sketch of the spot of occurrence.

3. Receipt No.4932 of Kottigehar toll gate.

4. Post mortem report dated 8-3-35.

5. Form C. C. permit belonging to Mr.B. Narayanan.

6. Lorry check register.
6.a. Entry showing lorry ran during the month of 7-3-35.
6a.1. Entry showing lorry No. 5648 ran on that day.
6a.2. Signature of Busoof Sab.

7. Motor driving license of Sheik Busoof.

8. Toll gate receipt book of Kottigehar toll gate.
8a. Entry showing S.K. 5648 lorry passed through Kottigehar toll gate on 7-3-35.
8b. Entry showing S.K. 5470 lorry ----- do ------
8c. Entry showing S.K. 783/1 ---- do ------
8d. Entry showing Mys.2184 ---- do ------
8e. Entry showing Mys. 5423 ---- do ------

The following articles were produced for the prosecution.

Art.1. Lorry Mys. 5648.
2. Check Coat.
3. One shirt.
4. White Panche.

The following witness were examined for the defence.

Dw.1. Sheik Imam. 2. Subbaraya Prabhu. 3. Basanabba. 4. Iddina Beri.

No exhibits were produced for the defence.
No articles were produced for the defence.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

17

No. P 3184

Dated, Bangalore, 8th November 1935

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The District Magistrate,
Kadur District.

Sir,

With reference to your letter No. J.2.1400-35, dated 29th October 1935 regarding the disqualification of driver Sheik Eusoof Sab from holding a drivers license, I am directed to enquire whether the driver is now a -- resident of Mysore State and if so his address may be -- ascertained and reported to Government for further action being taken.

I have the honor to be,
Sir,
Your most obedient servant

for General Secretary to Governmen

TRM.2

Appendix F G—1]

SUBJECT.....

.....

.....

Section Immigration

File No. 43-2-

Serial No. 1—

No. P3134/—

Diary No. of letter replied to.....

To

The Asst Controller of

Sir,

General and Revenue Secretariat

( )

the *193*

With reference to your letter No F2-1400-35 of 29.10.35 re the disqualification of driver Sheikh Ismail Sale from holding a drivers license I am directed to ~~enquire~~ ~~report~~ ~~Whether the driver is now a resident of Mupae State & if so his address~~ ~~may be~~ may be ascertained & reported to Govt for further action being taken.

I have etc

Date of issue 9/11/35

Signed by [illegible]

Whether the driver is now a resident of Mupae State & if so his address

List of enclosures.....

Copied by .....

Examined by.....

for General Secy

7/11

7/11

WD 03601—GPB—30,000—23-9-35

5232-35
P 6 35
9

Legis 43-35-3

No. J.2-1400-35

Office of the District Magistrate

Kadur District,

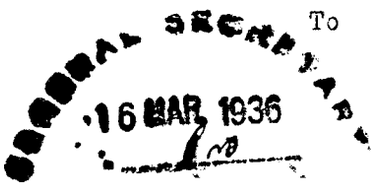
Dated Camp Kadur 13th March 1936.

From

M. Abdul Hakh Esq., B.A.,

District Magistrate,

Kadur District.



To

M. Venkatesa Iyengar Esq., M.A.,

General Secretary to Government of Mysore,

Bangalore.

Sir,

Page 16/7

Adverting to your letter No. P. 3134/Legis 43-35-2 dated th 9th November 1935 regarding the disqualification of driver Sheik Eusoo Sab and enquiring whether the driver is now a resident of Mysore State and if so to ascertain and intimate his address to Government, I have the honour to state that the driver is not now a resident of Mysore St and that he is a resident of Mangalore, South Kanara. His address is noted in the margin.

Sheik Eusoof, Son of Sheik Mohadeen, Kudroli near Jodupalli, Mangalore

I have the honour to be,

Sir,

Your most obedient servant,

Abdul Hakh

District Magistrate,
Kadur District.

Appendix F G—1]

SUBJECT.....

.....

.....

Diary No. of letter replied to..... .....

General and Revenue Secretariat

( )

the *193*

Date of issue 27.3.36

Signed by Mr. M.R.J.

List of enclosures.....

Copied by .....

Examined by.....

Section Legis

File No. 43-35

Serial No. 4

Notice (In duplicate) ~~No. [illegible]~~

To

Sheik Ensool Son of

Sheik Mohadeen Kudroli near

Joodupalli, Mangalore

Whereas it has come to the notice

Govt that you have been convicted under Sec

304A, I.P.C., and sentenced to rigorous

imprisonment for two months and to a fine of

Rs 100, in default to undergo rigorous imprison-

-ment for another two months, for causing a

death of a boy of about 7 years by your rash

and negligent driving of Motor lorry no MYS

5648, you are hereby required ~~to appear in person~~

~~(or by Pleader as the case may be) before~~

~~the undersigned at on~~

within one month from the date of service hereof

to show cause why you should not be

~~permanently disqualified~~ declared under Sec 18(ii) of

Reinquiries

The M.V. Regn to be permanently for obtaining a licence under the Sales Regn

Gen Secy to Govt
No. P6442/2 dt 27-3-36 1913
forwarded this Compliments to the

Dy Kasrud for causing the service of the notice on the individual Concerned and return this reference to correspondence ending this no J2-1400-35 dt 13.3.36.

B O

1913
19/3 for Gen Secy

B
19/3/36

25/3/36

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Bangalore, Dated, 25th March 1936

No.

Notice.

~~NOTIFICATION~~

To

Sheik Yusoof,
son of Sheik Mohadeen, Kudroli near Jodupalli,
Mangalore.

Whereas it has come to the notice of Government that you have been convicted under section 304 A, I.P.C., and sentenced to rigorous imprisonment for two months and to a fine of Rs.100/- in default to undergo rigorous imprisonment for another two months, for causing the death of a boy of about 7 years by your rash and negligent driving of motor lory No.Myd.3949, you are hereby required to show cause within one month from the date of service of this notice why you should not be declared under section 18(ii) of the Motor Vehicles Regulation to be disqualified permanently for obtaining a license under the said Regulation.

Sd. M.Venkatesa Iyengar.
General Secretary to Government

Memo No. Pb442 Leg'43-35-4 General and Revenue Secretariat.
Sec 2.

Dated Bangalore, the 25th March 1936.

Forwarded, with compliments, to the District Magistrate, Kadur District for causing the service of the notice on the individual concerned and return, with reference to correspondence ending with No.J.2-1400-35 dated 13th March 1936.

By order,

for General Secretary to Government

H.H.M.S

6423 P 23

To

Leg: 43-35-12

The General Secretary of the
Government of His Highness the
Maharaja of Mysore
Bangalore

20 APR 1936 P.M.

Humble petition of Sheik Yousuf Saheb s/o Mohidin Saheb Bus and Lorry Driver Badge No.234/S.K. and holder of Licence No.416/30 of S.Kanara, residing at Kudroly
Mangalore

Dated 16th, April 1936.

Honoured Sir,

In obedience to your Honour's notice No.----- P. 642/27-3-36 served on me on 14.4.36, I beg to represent that the licence was originally issued to me in 1921 by the Commissioner of Police Bombay where I was a Car Driver from 1921 to 1931 and during this period of 10 years in the City of Bombay where traffic is exceptionally heavy I have not --- made any defaults as would appear from my licence in your -- Honour's Office. Since 1931 I have been a Buss Driver in -- C.P.C. and Popular Motor Service in virtue of the Licence No.416/36 and badge No.234 issued to me by the D.S.P. South Kanara. During this latter period also there was no prosecution at all against me under the Motor Vehicles Act.

2. As a measure of retrenchment my service was --- dispensed with by C.P.C. and Popular Motor Vehicles Service and I was compelled to seek employment in a lorry run by Dr. Narain of Mudigere. To my misfortune this accident occurred in a foriegn place to which I was a mere stranger and consequently helpless in spite of all the care that I had exercised in preventing the accident. In view of the punishment inflicted upon me I beg to submit for Your ---- Honour's consideration that a further step in this in favour

74

cancelling my license and thereby permanently disqualifying me from obtaining a licence under the Motor Vehicle Act will abe double punishment for a poor man like me whose only source of livelihood is from Motor dirving.

I therefore pray that your Honour may be Graciously please to take my hard and pitiable Case into consideration Your Honour's benign consideration and to drop further proceedings against me. For which act of charity I shall as in duty bound ever pray.

I beg to remain

Honoured Sir

Your Honour's Most obedient Servant.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 9th May 193 6.

No. P 7455 Legis 43-35-16

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The District Magistrate,
Kadur District.

Sir,

In continuation of this office communication No.P.6442, Legis 43-45-4 dated 27th March 1936, I am directed to reques you to be so good as to obtain the description as such height, color, caste etc., of Sheik Eusoof, driver, from the Jail records where he suffered imprisonment and forward the same to Government within a week for orders being issued in the matter of his disqualification under Section 18 Motor Vehicl Regulation.

I have the honor to be,

Sir,

Your most obedient servant,

For Secretary to Government
General Department.

c.n.2

Appendix F G—1]

26

SUBJECT.....

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Section Legs

File No. 43-35

Serial No. 16

P 7455

Diary No. of letter replied to.....

No. Immediate

To The Dist Magistrate

General and Revenue Secretariat

( )

the *193*

Sir,

In Continuation of this office Conf

no P. 6442/Legs 43-45-4d) 27.3.36, I

Date of issue 9.5.36

am directed to request you to be so good

as to obtain the description of such height, color, caste etc

Signed by Mr. N.R.J.

driver, from the Jail records where he suffered

imprisonment and forward the same to Govt

within a week for orders being issued

in the matter of his

I have etc

Qualification under

Sec 18 M.V. Regn

For Gen Secy

9/5

M.

8/5/36

List of enclosures.....

Copied by

Examined by.....

WD 03601—GPB—30,000—23-9-35

D. M. 1.]

OFFICE OF THE DISTRICT MAGISTRATE,
KADUR DISTRICT.

No. J.S. 1[illegible]/36
Enc. One.

Dated, Chikmagalur,.....*193* 6.

Hyd: 43 35-23

FROM

M. Abdul Mukh, Esq., B.A.,
The District Magistrate,
Kadur District.

To

M. Venkatesa Iyengar, Esq., M.A.,
General Secretary to the Government of
His Highness the Maharaja of Mysore,
Bangalore.

-6 AUG. 1936

Sir,

With reference to your D.C. letter No. P. 917 dated the 4th instant, regarding the particulars of driver Sheik Yusoof, I have the honor to note below the description of the person as desired.

Notice issued to him with your No. P. 6442 dated the 27th March 1936 is herewith returned after service.

I have the honour to be,
Sir,
Your most obedient servant,

District Magistrate,
Kadur District.

Height. :- 5 Ft. 2 inches.

Age. :- 35 years.

Description of the person. :-
i. Dark brown.
ii. Oval face.
iii. Pointed nose.
iv. Two vaccination marks on each arm.
v. A lienar wound mark on the middle of the fore head,
vi. A wart on the right side of the stomach.
vii. A wart on the right side of the stomach.
viii. A burnt scar in the chest pit.

SM

286

Appendix F G—1]

SUBJECT.....

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Section Legis

File No. 43.35

Serial No. 26

Diary No. of letter replied to.....

No 1/M P 1267.

To

General and Revenue Secretariat

( )

the *193*

Date of issue 18-8-36

Signed by Dm - C.S.D.
M.R.J.R.

Enter matter in the P.U.D.

In exercise of the powers vested in them under Section 18,(1),(ii), of the Mysore M.V. Regn. 1928, the Govt of H. The Maharaja of Mysore hereby declare that Driver Sheik Ensoof, whose description is given below, son of Sheik Mohadeen residing at Kudroli, near Jodupalli, Mangalore shall be disqualified permanently from obtaining a driving license under the said Regn.

B—o

C
Fr Gen Secy
5/5/36

Memo no. P1268 dy 18-8-36

List of enclosures.....

TYPING SECTION
18. AUG. 1936
GEN. & REVE.

Copied by .....

Copy forwarded b/c to the Dm Mangalore with reference to correspondence ending with his letter no J2 1034/35 dy 5.8.36.

Examination of this office memo no 6442 dy

Examined by.....

B—o

WD 03601—GPB—30,000—23-9-35

P.P.O.

M. 4/5/36
8.36

Memo No P1269-76 of 18-8-86.

Copy forwarded w/c to the D.S.P and the remaining OC Mapitlaks for information

BO

for Gen Secy

M. 10/8/86

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

General and Revenue Secretariat

Dated, Bangalore, ~~18th August 1936.~~

No. P.1267/ Legis.43-35-26

NOTIFICATION.

In exercise of the powers vested in them under Section 18, (i), (ii) of the Mysore Motor Vehicle Regulation 1928, the Government of His Highness the Maharaja of Mysore hereby declare that Driver Sheik Eusoof, whose description is given below, son of Sheik Mohadeen, residing at Kudroli, near Jodupalli, Mangalore shall be disqualified permanently from obtaining a driving license under the said Regulation.

Height . :- 5 Feet 2 inches.

Age. :- 35 years.

Description of the person. :-
i. Dark brown
ii. Oval face.
iii. Pointed nose.
iv. Two vaccination marks on each arm.
v. A linear wound mark on the middle of the forehead,
vi. A wart on the right side of the stomach.
~~vii. A wart on the right side of the stomach~~
viii. A burn scar in the chest pit.

By order,

for General Secretary to Government

31

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 17th ~~May~~ August 1936.

No. Pol 234 Sfore 18

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The Secretary to the Hon'ble the Resident in Mysore.

Sir,

I am directed to forward herewith a copy of Government Notification No. P 1267 Lys 43-35-26 dated 15/18-8-36 relating to permanent disqualification of Sheik Kusoof, Driver, residing at Kudroli, near Jodupalli, Mangalore, from obtaining a driving license under the Mysore Motor Vehicles Regulation.

I have the honour to be,
Sir,
Your most obedient servant,

for DMG
for General Secretary to Government

Appendix F G—1]

SUBJECT..... 32

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Section Legs.

File No. 43-35-

Serial No. 27

Diary No. of letter replied to.....

No. P 2364

To

The Secy to the Hon'ble the Resident

General and Revenue Secretariat

( )

the *193*

Sir,

I am directed to forward herewith a copy of Govt memo no P1367 dt 15/18-8-1 Legs 43-35-26 relating to permanent disqualification of Sheik Ensoof, Driver, residing at Kudroli near Jodupalli, Mangalore, from obtaining a driving license under the Mysore M. V. Regn.

I have the

6 Nov 1936

for Gen Secy

575

Date of issue..... 5/8/36

Signed by .....

M. 5/8/36

List of enclosures.....

Copied by .....

Examined by.....

WD 03601—GPB—30,000—23-9-35